

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2008-162

May 5, 2008

DEPARTMENT OF EDUCATION AND
MAINE STATE LIBRARY
Annual Proposal of Dept of Education and the
State Library Filed Pursuant to Chapter 285(4)

ORDER

ADAMS, Chairman; REISHUS and VAFIADES, Commissioners

I. SUMMARY

In this Order, we approve spending from the Maine Telecommunications Education Access Fund (MTEAF) for July 2008 – June 2009 in a manner consistent with recommendations of the Maine State Library (MSL) and Department of Education (DOE) filed on March 31, 2008. We set the collection rate from utilities at 0.6% of intrastate revenues.

II. APPROVAL OF MTEAF FUNDING FOR 2007 – 2008

Title 35-A M.R.S.A. § 7104-B(4) provides that MTEAF funds may be used for discounts to qualified schools and libraries for the following: telecommunications services; internet access; internal connections; computers; training; and content. Chapter 285, § 4 of our Rules requires the MSL and DOE to file a joint proposal by March 1¹ each year describing any MTEAF funding to be requested for the following fiscal year. We sought comments, on the recommendation from interested persons. FairPoint, Telephone Association of Maine (TAM), the Office of the Public Advocate (OPA), and DOE/MSL filed comments. Based on our review of the recommendation and comments, we approve the following collection and spending from the MTEAF from July 1, 2008 through June 30, 2009.²

A. Basic Program Elements

We will continue to fund T-1 frame relay connections and internet service at no cost to all qualified schools and libraries pursuant to 35-A M.R.S.A. § 7104-B(1) (referred to as MSLN). This includes payment for filtering required by the Federal

¹ Upon request of DOE and MSL, we allowed the filing to take place on March 31, 2008.

² This is a non-adjudicatory proceeding in which the Commission is seeking to hear all views. FairPoint objected to OPA filing comments in response to its comments. We do not believe any entity has been unfairly treated or not adequately heard through the comments reviewed. We therefore reject FairPoint's request that the Commission ignore the OPA's comments.

E-Rate program. Approximately 135 sites making maximum use of a T-1 connection will have two T-1s. Projected cost to MTEAF, after application of E-Rate funds, is \$1,747,123.

DOE and MSL recommend that for 2008-2009, additional funding be provided for connections for adult education sites that offer high school diploma completion courses but which are not located in public school buildings. Out of 102 adult education programs, 24 fit this category. All funding in 2008-2009 would come from MTEAF as these 24 sites were not on the Federal E-Rate application filed in February 2008. Total cost for 2008-2009 is \$188,505. In subsequent years, Federal E-Rate would be available (paying approximately 68% of the cost). TAM objects to spending for these sites because of their failure to apply for Federal E-Rate (suggesting the ineffectiveness of consulting help). However, DOE has explained that it was only after contact by one of these sites in late January 2008 that it determined that such sites would be eligible for Federal E-Rate with some changes in the certification DOE provides concerning eligible sites. By the time the determination was made, it was too late to include them in the 2008-2009 application.

We agree that these sites should be included and that their inclusion in the E-Rate application was not possible this year. We approve funding from MTEAF for 2008-2009 with the requirement that these sites participate in the Federal E-Rate program in subsequent years.

B. Circuit Riders

The MSLN currently supports one "circuit rider" who is available by phone, e-mail, and for onsite visits to assist schools and libraries. Feedback on this service continues to be positive, especially from small schools and libraries. We will approve payment of \$116,535, which is reduced from last year's expenditure of \$159,960 due to the elimination of the second circuit rider position.

C. Raymond H. Fogler Library at the University of Maine – Digital Library

As we have done in the past, we will provide \$500,000 in 2008 – 2009 to allow Fogler Library to purchase access to electronic databases for citizens statewide, as permitted by 35-A M.R.S.A. § 7104-B. Last year we requested that prior to our approval of this year's plan, that the MSL and DOE provide further support for this recommendation, including whether it is the best use of MTEAF funds. MSL and DOE included a report on the usage of the Marvel program (electronic database access) funded with these monies. We further discuss Marvel in Section H below.

D. Asynchronous Transfer Mode (ATM)

Approximately 91 high schools have ATM connections for voice, data (instead of a T-1 line) and video. These sites pay \$2,075 per month for this service and each site applies for Federal E-Rate (with discounts ranging from 20% to 90%). Because the sites use their ATM in lieu of a T-1, we have provided financial support from the MTEAF to cover some costs not paid for by Federal E-Rate. The Commission

chose \$358 per month as an estimate of half the amount remaining after applying the average school E-Rate discount, which for these high schools was 66%. Therefore, \$358 continues to represent approximately half the amount owed after E-Rate is applied, and we will maintain that level of support.

Beginning in 2001, we also agreed to provide financial support for elementary and middle schools that are close enough to an ATM site that they can share the connection. These are sites that otherwise would have been eligible for their own T-1. We agree with MSL and DOE's recommendation that these shared sites continue to receive MTEAF funds in the amount for which they would otherwise be eligible, up to an amount not to exceed the monthly cost of the ATM connection when all the sites' credits are taken together. The total cost for ATM support in 2008-2009 is expected to be \$470,000.

E. Administration

We authorize the expenditure of \$30,000 to pay for a fund administrator to assess carriers, collect funds from carriers and make payments from the Fund (as permitted by 35-A M.R.S.A. §§ 7104-B(2) and 7104(3)). We also authorize the expenditure of funds to continue paying for a consultant to help with the E-Rate application process. We approve funding of \$233,000 a year for this contract. This extra assistance has been instrumental in MSLN receiving Federal E-Rate on a more timely basis with fewer sites being eliminated from the application due to errors. The consultant has also helped raise the discount level for Federal E-Rate through the collection of more accurate data from schools. We also authorize the continued payment of up to \$79,800 to fund a project manager for the Maine School and Library Network. The manager reports directly to the Director of the Maine State Library and the Commissioner of Education.

F. Libraries Choosing Not to Filter

In 2004, the Legislature amended 35-A M.R.S.A. § 7104-B(6) to allow public libraries to decline Federal E-Rate for internet service if they determine that applying for E-Rate (e.g., complying with E-Rate's filtering requirements) would substantially compromise the library's standards or mission. The statute allows the Commission to mitigate the loss of Federal E-Rate funds using the MTEAF.

Since the 2004-2005 program year, we have allowed non-filtering libraries to contribute \$25 per month toward the cost of internet service with MTEAF paying the remainder of the amount that would typically be paid for by Federal E-Rate. Under the current UNET contract, internet service costs \$105 per month. Assuming E-Rate will pay 68% of the cost of internet service for filtering libraries, MTEAF will provide a \$46.40 per month additional subsidy to these non-filtering libraries. Currently, 53 libraries have chosen not to filter. Therefore, this additional subsidy will cost MTEAF \$29,510 annually.

G. Alternative Equivalent Value (AEV)

MSL and DOE recommend that the Commission approve funding requests from schools or libraries for services that provide equivalent or greater level of service than 2 T-1s, with reimbursements at no more than the amount for which the site would ordinarily be eligible (up to two T-1s) after the Federal E-Rate Consortium discount is applied. The project manager will review all AEV requests to ensure the site is receiving equivalent or greater level of service. MSL and DOE estimate that for FY 2008, between 10 and 20 sites may take advantage of this offering. MSL and DOE estimate additional expense to MTEAF in funding year 2008-2009 to be no more than \$50,000.³ FairPoint and TAM object to expenditures for AEV. FairPoint claims that DOE and MSL are obligated to purchasing connectivity through their contract with FairPoint and obtaining services from other carriers would violate the contract.

The Commission's responsibility is to authorize spending on an annual basis from the MTEAF. The Commission may direct spending for any of the services specified by statute in 35-A M.R.S.A. § 7104-B(4). This could include the AEV services described in the DOE and MSL recommendation. In addition, our understanding is the DOE/MSL contract contains a floor on the number of T1's to be purchased and the number is currently being met and exceeded. DOE expects no more than ten to fifteen schools and libraries to use AEV. We find this acceptable as a stop-gap measure for sites that are making maximum use of two T-1s. DOE and MSL shall make sure FairPoint is provided an opportunity to meet a need for more than two T1's. We will approve up to \$50,000 for AEV as a stop-gap measure so that sites that are exceeding the bandwidth provided by two T-1s can pursue other options. We expected this to be approved only where a need can be demonstrated.

H. Innovative and Technologically Advanced Projects

Title 35-A M.R.S.A. § 7104-B(5) requires that "[a] minimum of 25% of each annual program budget must be devoted to targeted projects that are innovative and technologically advanced." Last year we stated our funding for ATM connections for schools and libraries continues to support an innovative and technologically advanced service, but falls short of the 25% target. We asked DOE and MSL to suggest ways to meet this requirement in time for implementation prior to our approval of the 2008-2009 spending. Twenty-five percent of projected annual MTEAF projected budget in 2008-2009 is \$837,575. For 2008-2009, \$470,000 will be spent on ATM. We agree with DOE and MSL that the Marvel program also fulfills the requirements for spending on an innovative project. Marvel is unique in that it allows Maine residents access to an expansive digital library from both home or at a library location. We urge the Maine State Library to increase its efforts to make this resource more widely known to Maine citizens.

³ After filing its recommendation, MSL and DOE clarified their request for AEV as reflected here.

I. Assessment by Carriers

Title 35-A M.R.S.A. § 7104-B(3)(A) requires the Commission to annually establish an amount of up to 0.7% of retail charges, to be collected by intrastate carriers for the MTEAF. Chapter 285, § 2(B) requires the Commission, in establishing the amount to be collected, to consider the needs of schools and libraries as reported by MSL and DOE, the amount collected in the previous year and the impact on ratepayers.

After reviewing the MSL and DOE recommendation, we find that an assessment of 0.6% will provide sufficient funds to cover the expenditures proposed by DOE and MSL. This is a decrease from 0.7% collected in 2007-2008. We prefer to keep the MTEAF assessment as low as possible and as close to actual projected spending as possible. We will monitor the MTEAF cash flow to ensure that sufficient funds exist for the services we have agreed to fund in this Order.

J. Future Expenditures from MTEAF

The recommendation from MSL and DOE notes that the demand for bandwidth from schools and libraries continues to grow and the need for deployment of additional bandwidth. They state that they plan to have a new initiative in place to by July 1, 2010. We are concerned that two more years will pass without addressing in a comprehensive manner the needs of schools and libraries making maximum use of their current T1s. MSL and DOE shall file prior to October 31, 2008, their plans for the July 2009 – July 2010 period so we can determine before the filing of the Federal E-Rate application in February 2009, how best to make maximum use of MTEAF funds for 2009-2010.

III. DELEGATION

We delegate to the General Counsel or her designee the authority to direct the MTEAF administrator to make disbursements from the Fund consistent with this Order.

Dated at Augusta, Maine this 5th day of May, 2008.

BY ORDER OF THE COMMISSION

Karen Geraghty
Administrative Director

COMMISSIONERS VOTING FOR: Reishus
Vafiades

COMMISSIONER ABSENT: Adams

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within **21 days** of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Appellate Procedure.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.